

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 04-33**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Application of the Tennessee sales and use tax in certain factual situations.

**SCOPE**

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

**FACTS<sup>1</sup>**

The Taxpayer is located in Tennessee and holds a valid Tennessee sales and use tax certificate as a manufacturer. It is not qualified to do business in any state other than Tennessee. The Taxpayer's business is the fabrication and processing of black pipe, galvanized pipe, and other tangible personal property used for [SYSTEMS] or plumbing systems. The Taxpayer cuts, sizes, welds and threads various types of pipe and fabricates other component parts used in [SYSTEMS] that, when installed, become a component part of a building.

The Taxpayer generally has a fixed price purchase order from its customer that requires the Taxpayer to fabricate a finished product to the customer's specifications using raw material purchased by the Taxpayer under a blanket certificate of resale. However, in some instances the customer furnishes the raw material pipe.

The finished product is delivered to the Taxpayer's customers in one of the following manners:

1. By use of the Taxpayer's transportation equipment.

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<sup>1</sup> In an August 23, 2004 telephone conversation between the Taxpayer's representative and a representative of this Department, additional facts were furnished concerning terms of shipment by common carrier.

2. By shipment using a common carrier.
3. By the customer's pick-up of the product at the Taxpayer's manufacturing facility in Tennessee.

In situations where the Taxpayer uses a common carrier to ship the finished product to its customers, the shipment is made F.O.B. (free on board) destination. Thus, title to the product and risk of its loss remain with the Taxpayer until the product reaches the customer.

The Taxpayer does not install any of the products that it manufactures and sells.

### **QUESTIONS PRESENTED**

1. Are the following transactions subject to Tennessee sales and use tax?
  - A. Pursuant to a customer's order, the Taxpayer provides the materials and cuts, sizes, welds, or threads the pipe or materials according to the customer's specifications. The finished product is delivered by common carrier to a job site in another state. Title to the goods passes to the customer when received at the job site.
  - B. Same facts as in item A above, except that the finished goods are delivered to a job site in a state other than Tennessee by the Taxpayer's delivery vehicle.
  - C. Same facts as in item A above, except that the customer picks up the completed product at the Taxpayer's manufacturing facility in Tennessee.
  - D. The customer furnishes the materials and the Taxpayer, pursuant to the customer's order, cuts, sizes, welds and threads the customer's materials. The completed product is delivered via common carrier to a job site in Tennessee.
  - E. Same facts as in item D above, except that the completed product is delivered to a job site outside Tennessee by common carrier.
  - F. Same facts as in item D above, except that the Taxpayer uses its own delivery vehicle to deliver the product to a job site in Tennessee.
  - G. Same facts as in item D above, except that the Taxpayer delivers the product via their delivery vehicle to another state.
  - H. Same facts as in item D above, except that the customer picks up the completed product at the Taxpayer's manufacturing facility in Tennessee.
2. If the completed products are delivered via common carrier and the freight bill from the common carrier is billed separately to the customer or forwarded to the customer

for payment directly to the carrier, are the freight charges subject to Tennessee sales tax?

## **RULINGS**

1. A. No<sup>2</sup>.
- B. No<sup>3</sup>.
- C. Yes<sup>4</sup>.
- D. Yes<sup>5</sup>.
- E. No<sup>6</sup>.
- F. Yes<sup>7</sup>.

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<sup>2</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, this sale will be sourced to the location where the product is received by the purchaser or the purchaser's donee, designated as such by the purchaser, including the location indicated by the seller's instructions for delivery to the purchaser or donee (See: Tenn. Code Ann. § 67-6-902(a)(2)). Since the Taxpayer, by use of a common carrier, delivers the product to a point outside Tennessee F.O.B. destination in this set of facts, the sale will not be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

<sup>3</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, this sale will be sourced to the location where the product is received by the purchaser or the purchaser's donee, designated as such by the purchaser, including the location indicated by the seller's instructions for delivery to the purchaser or donee (See: Tenn. Code Ann. § 67-6-902(a)(2)). Since the Taxpayer delivers the product to a point outside Tennessee in this set of facts, the sale will not be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

<sup>4</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, when the product is received by the purchaser at the business location of the seller, the sale is sourced to that business location (See: Tenn. Code Ann. § 67-6-902(a)(1)). Since the purchaser picks up the product at the Taxpayer's Tennessee business location in this set of facts, the sale will be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

<sup>5</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, this sale will be sourced to the location where the product is received by the purchaser or the purchaser's donee, designated as such by the purchaser, including the location indicated by the seller's instructions for delivery to the purchaser or donee (See: Tenn. Code Ann. § 67-6-902(a)(2)). Since the Taxpayer, by use of a common carrier, delivers the product to a point in Tennessee F.O.B. destination in this set of facts, the sale will be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

<sup>6</sup> Same as footnote #2.

<sup>7</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, this sale will be sourced to the location where the product is received by the purchaser or the purchaser's donee, designated as such by the purchaser, including the location indicated by the seller's instructions for delivery to the purchaser or donee (See: Tenn. Code Ann. § 67-6-902(a)(2)). Since the Taxpayer delivers the product to a point in Tennessee in this set of facts, the sale will be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

G. No<sup>8</sup>.

H. Yes<sup>9</sup>.

2. Yes, if title to the property, or fabrication thereon, being transported passes to the Taxpayer's customer at a destination point inside Tennessee. No, if title to the property, or fabrication thereon, being transported passes to the Taxpayer's customer at a destination point outside Tennessee<sup>10</sup>.

## **ANALYSIS**

### **Applicable Statutes and Tenn. Comp. R. & Regs.**

Tenn. Code Ann. § 67-6-202(a) levies the Tennessee sales tax as follows:

For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale.

A "sale" is defined by Tenn. Code Ann. § 67-6-102(a)(26)(A) to mean:

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional, or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work . . . [.]

Tenn. Comp. R. & Regs. 1320-5-1-.41, set forth in pertinent part below, confirms that the sales and use tax is applicable to the total proceeds from fabricated articles of tangible personal property even though the customer may furnish the materials to be fabricated.

Where persons contract to fabricate articles of tangible personal property from materials selected or furnished by customers, the total proceeds from the sales are

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<sup>8</sup> Same as footnote #3.

<sup>9</sup> Same as footnote #4.

<sup>10</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, all delivery charges will be included in the "sales price" of the product and thus will be subject to Tennessee sales and use tax if the sale is sourced to Tennessee (See: Tenn. Code Ann. § 67-6-102(48)(A)(iv)). In factual situations where the Taxpayer, by use of a common carrier, delivers the product to a point in Tennessee F.O.B. destination, the sale will be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes. In factual situations where the Taxpayer, by use of a common carrier, delivers the product to a point outside Tennessee F.O.B. destination, the sale and delivery charge will not be subject to Tennessee sales and use tax under the Streamlined Sales and Use Tax statutes.

subject to the sales or use tax. Such persons may not deduct labor or service charges of fabrication or production, notwithstanding that such charges may be separately billed to customers apart from charges for materials.

Tenn. Comp. R. & Regs. 1320-5-1-.40(1) provides that:

Materials and taxable services bought for future processing, manufacturing or conversion into articles of tangible personal property for resale, where such materials become a component part of the finished products, are not subject to sales or use tax.

With regard to freight or delivery charges, Tenn. Comp. R. & Regs. 1320-5-1-.71 provides as follows:

Freight, delivery, or other like transportation charges are subject to the sales and use tax if title to the property being transported passes to the vendee at the destination point. Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the sales or use tax. It is immaterial whether the vendor or vendee actually pays for any charges made for transportation, whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges. In cases where a vendor makes a separate charge for delivering tangible personal property in his own vehicle, or makes arrangements for delivering tangible personal property, other than by common carrier, the delivery charges shall be considered a part of the selling price subject to the sales or use tax.

Application of Statutes and Tenn. Comp. R. & Regs.  
To Each Factual Situation Presented

We now turn to application of Tennessee law and Tenn. Comp. R. & Regs. to each set of facts that the Taxpayer presents.

1. (A) In this set of facts, the Taxpayer provides the materials to be fabricated in accordance with the customer's specifications. Pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.40(1), the Taxpayer would not have to pay Tennessee sales or use tax upon the purchase of such materials.

After fabrication, the finished product is delivered by common carrier F.O.B. destination to a job site in another state. Title to the product passes to the Taxpayer's customer when received at such job site. Neither title to nor possession of the product has been transferred to the Taxpayer's customer in Tennessee. Pursuant to Tenn. Code Ann. § 67-6-102(a)(26)(A), no "sale" has occurred in Tennessee and thus no Tennessee sales tax need be collected by the Taxpayer from the purchaser.

- (B) This set of facts is the same as those in (A) above except that the Taxpayer makes delivery of the finished product in its own vehicle to a job site in another state.

Again, no “sale” has occurred in Tennessee under the provisions of Tenn. Code Ann. § 67-6-102(a)(26)(A) because neither title to nor possession of the product has been transferred to the Taxpayer’s customer in Tennessee. Thus, the Taxpayer does not need to collect Tennessee sales tax from the buyer.

- (C) The facts in this situation are the same as those in (A) above except that the customer picks up the finished product at the Taxpayer’s manufacturing plant in Tennessee. In this case, title to and possession of the product are transferred to the Taxpayer’s customer in Tennessee and a “sale” has occurred in Tennessee under Tenn. Code Ann. § 67-6-102(a)(26)(A).

Assuming that the purchaser is not otherwise exempt from Tennessee sales and use tax, the Taxpayer must collect the tax from the purchaser. The fact that the purchaser will later install the product as a component part of a building has no effect on the taxability of the transaction.

- (D) In this set of facts, the customer furnishes the materials for the Taxpayer to fabricate in accordance with the customer’s specifications. The finished product is delivered via common carrier to a job site in Tennessee.

A Tennessee sale has occurred pursuant to Tenn. Code Ann. § 67-6-102(a)(26)(A), which says that fabrication of tangible personal property furnished by another is tantamount to a “sale”, and Tenn. Comp. R. & Regs. 1320-5-1-.41, which confirms that sales tax is applicable to the total proceeds from fabricated articles of tangible personal property even though the customer has furnished the materials to be fabricated. Both title to and possession of the product have transferred from the Taxpayer to the customer in Tennessee.

Assuming that the purchaser is not otherwise exempt from Tennessee sales and use tax, the Taxpayer must collect the tax from the purchaser on the gross proceeds from the transaction even though the gross proceeds are only for the fabrication labor. The fact that the purchaser will later install the product as a component part of a building has no effect on the taxability of the transaction.

- (E) These facts are the same as in (D) above except that the product for which the customer furnished the materials is delivered to a job site outside Tennessee by common carrier.

Pursuant to Tenn. Code Ann. § 67-6-102(a)(26)(A), no “sale” has occurred in Tennessee and thus no Tennessee sales tax need be collected by the Taxpayer from the purchaser. Neither title to nor possession of the product have been transferred to the customer in Tennessee.

- (F) This set of facts is the same as those in (D) above except that the Taxpayer uses its delivery vehicle to deliver the product to a job site in Tennessee.

A Tennessee sale has occurred pursuant to Tenn. Code Ann. § 67-6-102(a)(26)(A), which says that fabrication of tangible personal property furnished by another is tantamount to a “sale,” and Tenn. Comp. R. & Regs. 1320-5-1-.41, which confirms that sales tax is applicable to the total proceeds from fabricated articles of tangible personal property even though the customer has furnished the materials to be fabricated. Both title to and possession of the product have transferred from the Taxpayer to the customer in Tennessee.

Assuming that the purchaser is not otherwise exempt from Tennessee sales and use tax, the Taxpayer must collect the tax from the purchaser on the gross proceeds from the transaction even though the gross proceeds are only for the fabrication labor. The fact that the purchaser will later install the product as a component part of a building has no effect on the taxability of the transaction.

- (G) This set of facts is the same as those in (D) above except that the Taxpayer makes delivery of the finished product in its own vehicle to another state.

No “sale” has occurred in Tennessee under the provisions of Tenn. Code Ann. § 67-6-102(a)(26)(A) because neither title to nor possession of the product has passed from the Taxpayer to the customer in Tennessee. Thus, the Taxpayer does not need to collect Tennessee sales tax from the buyer.

- (H) The facts in this situation are the same as those in (D) above except that the customer picks up the finished product at the Taxpayer’s manufacturing plant in Tennessee.

A Tennessee sale has occurred pursuant to Tenn. Code Ann. § 67-6-102(a)(26)(A), which says that fabrication of tangible personal property furnished by another is tantamount to a “sale,” and Tenn. Comp. R. & Regs. 1320-5-1-.41, which confirms that sales tax is applicable to the total proceeds from fabricated articles of tangible personal property even though the customer has furnished the materials to be fabricated. Both title to and possession of the product have transferred to the customer in Tennessee.

Assuming that the purchaser is not otherwise exempt from Tennessee sales and use tax, the Taxpayer must collect the tax from the purchaser on the gross proceeds from the transaction even though the gross proceeds are only for the fabrication labor. The fact that the purchaser will later install the product as a component part of a building has no effect on the taxability of the transaction.

2. The freight charges for completed projects that are delivered by common carrier are either billed separately to the customer by the Taxpayer or forwarded to the customer for payment directly to the carrier.

Tenn. Comp. R. & Regs. 1320-5-1-.71 states that freight, delivery, or other like transportation charges are subject to the sales and use tax if title to the property being transported passes to the Taxpayer's customer at a destination point inside Tennessee. It does not matter whether the Taxpayer or the Taxpayer's customer actually pays such charges or whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges.

If title to the property being transported passes to the Taxpayer's customer at the point of origin, or at a destination point outside Tennessee, the freight or other transportation charges are not subject to the sales or use tax.

Should the Taxpayer make a separate charge for delivering tangible personal property in its own vehicle, or make arrangements for delivering such property other than by common carrier, any delivery charges would be considered a part of the selling price subject to the sales or use tax if the sale is made in Tennessee.

Different Results are Obtained  
If the Taxpayer Installs the Finished Product to  
Fulfill its Contract Obligations<sup>11</sup>

The facts given by the Taxpayer state that in no case does the Taxpayer install any of the products that it manufactures and sells and the rulings herein are based on that assumption. However, if the Taxpayer were to install as component parts of a building the finished products that it manufactures and sells, different rulings would result. See: Tenn. Code Ann. § 67-6-209(b) and *Security Fire Protection Company, Inc. v. Huddleston*, 138 S.W.3<sup>rd</sup> 829 (Tenn. Ct. App. 2003) (permission to Appeal denied (Tenn. 2004)).

In such a case, the Taxpayer would not be reselling the finished product, but would be using it as a contractor to fulfill its contract obligations. Title to the finished products installed by the Taxpayer as component parts of buildings at job sites would not pass to the purchaser before installation by the Taxpayer. Accordingly, the Taxpayer would be liable for Tennessee sales tax on materials purchased in Tennessee, fabricated into finished products and installed as component parts of buildings in Tennessee or outside Tennessee.

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<sup>11</sup> Under Streamlined Sales and Use Tax statutes, effective July 1, 2005, the application of Tennessee sales and use tax to materials or products fabricated and installed by a contractor dealer as component parts of buildings in fulfillment of contract obligations will not change except that the state tax exemption for materials furnished a contractor by a private nonprofit college or university will also apply to local taxes. (See: Tenn. Code Ann. § 67-6-209(b)).



If the Taxpayer purchases materials outside Tennessee and brings them into Tennessee for fabrication into finished products which the Taxpayer installs as component parts of buildings in Tennessee or outside Tennessee, the Taxpayer would be subject to use tax on the purchase price of such materials.

Likewise, the Taxpayer would be subject to use tax on materials furnished by the Taxpayer's customer, fabricated in Tennessee into finished products and installed as component parts of buildings in Tennessee or outside Tennessee.

In each case, the incidence of the tax occurs in Tennessee at the point the finished product is withdrawn from inventory by the Taxpayer for use in fulfilling its contract with its customer.

The exemptions described below would apply to the Taxpayer only in the event that the Taxpayer installs the tangible personal property that it fabricates in the situations described.

In the case of materials furnished a contractor (the Taxpayer) by a church, when the church is the title holder, and the materials are used by the Taxpayer for church construction, Tenn. Code Ann. § 67-6-209(b) exempts the Taxpayer from payment of the state and local sales and use tax on such materials. Materials furnished by a private nonprofit college or university, when the private nonprofit college or university is the title holder, and the materials are used for private nonprofit college or university construction, are exempt from the state portion of the sales and use tax.

Tenn. Code Ann. § 67-6-209(e) exempts materials and equipment purchased or used for construction or installation by a contractor of electric generating plants, distribution systems, resource recovery facilities where steam or electric energy is produced, or coal gasification plants or distribution systems owned or operated by the United States or any agency thereof created by an act of Congress or by the State of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the Rural Electric and Community Services Cooperative Act. The exemption also applies if the electric generating plant, including the transmission substation, is owned or operated by a person as long the plant is not located in Tennessee and such person does not, at any time, distribute electricity to consumers in Tennessee.

Pipes, fittings and materials used by a contractor (the Taxpayer) to repair or maintain an existing water utility system owned by a utility district created under Title 7, Chapter 82 of the Tennessee Code Annotated are exempt from the tax pursuant to Tenn. Code Ann. § 67-6-209(f) if they become an integral part of the water utility system.

Tenn. Code Ann. § 67-6-209(g) exempts tangible personal property furnished to a contractor by a dealer for use in the installation of a manufactured home if previously subjected to the tax levied by Tenn. Code Ann. § 67-6-216 on the retail sale of manufactured homes or accessories, parts, furniture, appliances, delivery fees, installation fees and other additional or incidental items or services.

Arnold B. Clapp  
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APPROVED: Loren L. Chumley, Commissioner

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